

GENERAL ORDER NO. ____

**PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

**Rules Governing Telecommunications Consumer Empowerment and Fraud
Protection**

Adopted _____; Effective _____
(Decision _____ in Rulemaking 00-02-004)

IT IS ORDERED that all Commission-regulated telecommunications utilities shall
comply with the rules set forth in this General Order.

Consumer Empowerment Rules

A. Applicability

These rules are applicable to telecommunications services subject to the Commission's jurisdiction offered by telecommunications carriers, including wireless carriers when expressly included in these rules. Each carrier shall observe these rules when dealing with the public, including small businesses (as defined herein).

Compliance with these rules does not relieve carriers of other obligations they may have under their tariffs, other Commission general orders and decisions, FCC orders and federal statutes.

These rules do not limit any rights a consumer may have to pursue remedies for conduct that is not addressed by these rules. Any civil action that purports to hold a carrier liable for conduct that complies with these rules interferes with and undermines the Commission's policies and jurisdiction and therefore would be barred.

For services offered under the Universal Lifeline Telephone Service program, carriers shall also comply with the requirements set forth in General Order 153, Procedures for Administration of the Moore Universal Telephone Service Act where they apply. The requirements of General Order 153 take precedence over these rules whenever there is a conflict between them.

The Commission intends to continue its policy of cooperating with law enforcement authorities to enforce consumer protection laws that prohibit misleading advertising and other unfair business practices.

These rules shall not be interpreted to create a private right of action or form the predicate for a right of action under any other state or federal law. The standard to be applied in the construction and application of these rules is that of a reasonable consumer.

B. Definitions

Agent:

One who represents another in dealings with third persons [Taken from Civil Code §2295].

Basic Service:

A minimum level of telecommunications service, as defined in D.96-10-066 and as may be changed by later decisions, which each carrier offering local exchange service is required to provide to all of its residential customers who request local exchange service. Also referred to as "basic exchange service."

Carrier:

Any telecommunications provider subject to the Commission's jurisdiction. "Carrier" also includes all entities offering telephone services via telephone prepaid debit cards that are required to obtain operating authority or register with the Commission as specified in Public Utilities Code Section 885. "LEC" refers to local exchange carriers; "ILEC" refers to incumbent local exchange carriers; "CLC" refers to competitive local exchange carriers; "IEC" refers to interexchange carriers; and "CMRS" refers to commercial mobile radio service carriers.

Clear and Conspicuous:

A statement is clear and conspicuous if it is presented in a manner that is readily noticeable, readable, and/or audible, and understandable to the audience to whom it is disseminated.

Commission:

California Public Utilities Commission, unless otherwise noted.

Consumer:

Any individual or small business which purchases or subscribes, or may potentially purchase or subscribe, to any product or service provided or billed by a carrier.

Consumer Affairs Branch (CAB):

The Commission office where California consumers may complain about a utility service or billing problem they have not been able to resolve with the utility.

Day:

A calendar day unless otherwise indicated.

Employee:

One who is deemed under California law to be an employee of a carrier.

Rates and/or Charges:

Any amounts to be paid by the subscriber of a telecommunications service by whatever name, including charges, surcharges and fees, that are collected and retained by the carrier. Unless otherwise indicated, "rates" includes any subscriber line charges (also known as the end user common line charge)

authorized by the Federal Communications Commission.

Small Business:

A business that subscribes for not more than ten telephone voice grade switched access lines from any single carrier, or an individual who subscribes directly for not more than ten voice grade switched access lines from any single carrier for business use or combination business and personal use. As used in these rules, Small Business does not include a business or individual subscribing to **T-1** or greater-capacity services. A business is defined by a billed account.

Subscriber:

Any individual or small business that purchases or subscribes to any telecommunications service subject to Commission jurisdiction. Also referred to as a “customer.”

Tariffed Service:

A service provided by a telecommunications carrier under tariffs on file at the Commission. Tariffed services also include services otherwise tariffed with the Commission but provided under contract.

Written; In Writing:

Both “written” and “in-writing” describe materials intended to be read, either in hardcopy document form (including fax) or transmitted through electronic media. For purposes of these rules, whenever anything is required to be provided “in writing” or in “written” form (e.g., a disclosure, a notice, or a confirmation), the requirement may be satisfied through the use of electronic media if both parties to the communication have agreed to do so. If they have not, a tangible, hardcopy document is required. Carriers’ electronic communications with customers must satisfy the requirements of the federal Electronic Signatures Act, 15 USCA §§ 7001 et seq. and/or the California Uniform Electronic Transactions Act, Cal. Civil Code §§ 1633 et seq., as applicable.

C. Rules

Rule 1: Carrier Disclosure

(a) Every carrier offering tariffed services whose annual gross intrastate revenues, as defined in Public Utilities Code Section 435(c) and reported to the Commission for purposes of the Utilities Reimbursement Account exceed \$10 million, shall clearly and conspicuously publish, and shall thereafter keep up to date, its currently effective California tariffs on a

World Wide Web site on the Internet. The site must be freely accessible and the tariffs viewable and printable without charge. Carriers newly exceeding the \$10 million revenue threshold in future years must comply with this rule not later than 180 days after the due date to file their first annual report to the Commission showing they have done so.

(b) Non-Tariffed Services: For each generally available retail rate plan offered to new consumers carriers shall make clearly and conspicuously make available to consumers in collateral or other disclosures at the point of sale and on their web sites, at least the following information, as applicable: (a) the calling area for the plan; (b) the monthly access fee or base charge; (c) the number of airtime minutes included in the plan; (d) any nights and weekend minutes included in the plan or other differing charges for different time periods when nights and weekend minutes or other charges apply; (e) the charges for excess or additional minutes; (f) per-minute long distance charges or whether long distance is included in other rates; (g) per minute roaming or off-network charges; (h) whether any additional taxes, fees or surcharges apply; (i) the amount or range of any such fees or surcharges that are collected and retained by the carrier; (j) whether a fixed-term contract is required and its duration; (k) any activation or initiation fee; and (l) any early termination fee that applies and the trial period during which no early termination fee will apply. This rule 1(b) is applicable only to carriers offering non-tariffed services whose annual gross intrastate revenues, as defined in Public Utilities Code Section 435(c) and reported to the Commission for purposes of the Utilities Reimbursement Account exceed \$10 million.

(c) Every carrier shall provide the following upon request by any subscriber or former subscriber for whom charges or credits are still pending:

(1) A description of each service for which charges appeared on the subscriber's bill, and sufficient information regarding that service to respond to the subscriber's inquiry.

(2) A toll-free telephone number the subscriber may call to reach the carrier for inquiries, disputes and complaints related to the bill or to any other aspect of the subscriber's service.

(3) For any charges the carrier has placed on the bill on behalf of any other entity, but for which the carrier does not handle inquiries, disputes and complaints: the name of the other entity, a toll-free telephone number the subscriber may call, and, for inquiries, disputes and complaints related to those charges.

(4) The toll-free telephone number of the Commission's Consumer Affairs Branch

(5) A copy of the carrier's privacy policy.

(d) A carrier providing basic service in an area shall provide or cause to be provided the following emergency and customer disclosure information either in the alphabetical telephone directory provided to its customers in that area or by other means that meet the carrier's and customer's needs.

(1) The procedures which the carrier will follow during emergencies, how telephone subscribers can best use the telephone network in an emergency situation, and the emergency services available by dialing 911.

(2) Information regarding state and federal laws that protect the privacy rights of telephone subscribers with respect to telephone solicitations.

(3) Telephone number(s) to contact the carrier for any purpose related to a customer's account or service.

(4) Basic service rates and information, including those for Universal Lifeline Telephone Service.

(5) The carrier's legal name, and the names under which the carrier offers regulated telephone service in California.

(6) The carrier's prefixes within the directory boundaries; where each is located; and for each prefix, a list of all other prefixes which can be reached as a local call.

(7) Accessibility information for non-English speaking and deaf and disabled customers.

(8) For carriers having tariffs or other customer disclosure information on the Internet, the carrier's Internet address for accessing that information.

(9) The Commission's Internet address where this General Order is posted.

(10) Information explaining the availability and effect of Caller ID and pay-per-call number, such as 976-numbers blocking options.

(e) Service agreements or contracts may not incorporate other information by reference, except for (1) rates, terms and conditions from Commission approved tariffs, (2) information contained in referenced material that is provided simultaneously with the service agreement or contract, or (3) information that is used with formulae identified in the agreement or contract in order to calculate the applicable rate or charge,

where all necessary components are readily available from the carrier at no charge. In each case, reference to rates, terms and conditions is permitted provided that the document (tariff section or other publication) containing such rates, terms and conditions is cited in the service agreement or contract.

Rule 2: Service Initiation and Changes

(a) Carriers shall provide consumers initiating a service with sufficient information about that carrier's services to enable consumers to make informed choices among services, including availability and rates of the least expensive service responsive to the customer's inquiry and, in the case of carriers providing non-tariffed services, availability and cost of pay-as-you-go or other service plans that do not require long-term contracts.

(b) Carriers offering basic service shall provide consumers initiating service with the following information whenever applicable:

(1) Availability, eligibility requirements and discounts associated with the Universal Lifeline and Deaf and Disabled Trust Programs.

(2) Availability and effect of freezing the pre-subscribed carrier assigned to the account.

(3) Availability and effect of restricting toll calling.

(4) Availability and effect of deleting access to 900 and 976 pay-per-call telephone information services.

(5) Availability and effect of blocking options for pay per use.

(6) Availability and effect of blocking non-presubscribed carrier (e.g., third party) charges from being billed on the telephone bill.

(7) Availability and effect of Caller ID blocking options.

(8) Availability and rates of the least expensive service responsive to the customer's inquiry.

(c) A carrier offering non-tariffed service shall provide consumers initiating service with information regarding the availability and cost of service plans that do not require a long term contract, if the carrier offers such plans.

(d) For services offered on a tariffed basis, the carrier shall provide the subscriber a written confirmation of the order not later than seven business days after it is accepted, or seven days after the carrier providing the service is notified of the order, whichever is later.

(e) For non-tariffed services offered under a term contract by carriers, including wireless carriers, the carrier shall provide the subscriber with a written contract, either at the point of sale or no later than seven business days after the order is accepted. The contract shall include applicable rates terms and conditions for each service ordered, other than those incorporated by reference as permitted by these rules.

(f) Wireless trial period for new service:

(1) When a subscriber initiates service with a wireless carrier, the subscriber will be informed of and given a period of not less than 14 days to try out the service. The carrier will not impose an early termination fee if the subscriber cancels service within this period, provided that the subscriber complies with a disclosed applicable return and/or exchange policies.

(2) This rule 2(e) applies only to early termination fees and does not affect other fees and charges the subscriber is contractually obligated to pay, such as air time charges, governmental fees and taxes and roaming charges for actual use of the phone outside the provider's network.

(g) No carrier whose service has been cancelled at the subscriber's request shall re-establish service for that subscriber without a new subscriber authorization. Authorization may not be founded upon any term in an agreement for service that binds the subscriber to again take service from the carrier.

(h) When a carrier denies an application for a telecommunications service subject to Commission jurisdiction for credit reasons, the carrier shall inform the applicant of the reasons within 30 days thereafter.

(i) All disputed charges for any telecommunications service are subject to a rebuttable presumption that the charges are unauthorized unless there is (i) a record of affirmative subscriber authorization or (ii) a demonstrated pattern of past use.

(j) When establishing an installation or repair appointment for which the subscriber must be present, the carrier shall offer the subscriber a four-hour or shorter period during which it will arrive to commence work. If the installation or repair is not commenced within that period, the carrier offering the repair or installation service shall provide a \$25 minimum credit to the subscriber unless the appointment was missed because (1) the carrier was denied access to the premises, (2) force majeure, or (3) the carrier cancelled or rescheduled the appointment no later than 5:00 p.m. two business days prior to the appointment. This credit is independent of any remedies available to the subscriber under Civil Code §1722(c) or elsewhere.

Rule 3: Billing, Late Charges and Back Billing

(a) In accordance with the Federal Truth in Billing Act 47 C.F.R. Section 64.2401(a)(3)), telephone bills shall be clearly organized and may only contain charges for products and services the purchase of which the subscriber has authorized.

(b) Where charges for two or more carriers appear on the same telephone bill, the charges must be separated or clearly identified by service provider.

(c) Where a telephone bill contains both charges for basic residential or single line business service and other charges, the bill must note the minimum amount the customer must pay to avoid disconnection.

(d) Carriers will distinguish (a) monthly charges for service and features, and other charges collected and retained by the carrier, from (b) taxes, fees and other charges collected by the carrier and remitted to federal, state or local governments. Carriers will not label cost recovery fees or charges as taxes.

(e) Telephone bills shall, at a minimum, contain the following information: (1) billing carrier's name; (2) period of service covered by the bill (excluding services for which back billing is permitted); (3) when payment is due ; (4) late payment charge (if applicable) or the amount to be paid if the payment is late and the period after which it may be applied; (5) how to pay; and, (6) the carrier's toll-free number.

(f) Where the subscriber has arranged with the carrier to access the telephone bill only by e-mail or the Internet rather than by regular mail, the provisions of this Rule 4 shall apply to the bill so presented. In that case, the carrier shall in addition provide e-mail or web site addresses for billing inquiries and complaints.

(g) In addition to the billing requirements above, each bill shall include the appropriate telephone number of the commission that a subscriber may use to register a complaint.

(h) A carrier shall not apply late fees from and after the date the carrier receives payment.

(i) A bill shall not include any previously unbilled charge for intrastate service furnished prior to three months immediately preceding the date of the bill, four months in the case of intrastate wireless roaming charges on a system other than the subscriber's home system, and five months for collect, third-party, and calling card calls. This limitation on back billing does not apply in cases involving subscriber fraud.

(j) Carriers shall prorate charges for basic service for partial months. A 30-day month may be used for prorating in lieu of calendar days.

(k) Bills must be based on the rates in effect at the time the service was used. With specific reference to wireless service providers, roaming charges shall be billed at the per-minute charge in effect at the time of use regardless of when the charges appear on the subscriber's bill.

Rule 4: Slamming

A. Purpose and Scope

The purpose of these rules is to establish carriers' and subscribers' rights and responsibilities, and the procedures both must follow, for addressing slamming complaints that involve California's regulated telecommunications carriers. Slamming is the unauthorized change of a subscriber's presubscribed carrier. These California-specific rules are designed to supplement and work in conjunction with corresponding rules issued by the Federal Communications Commission.

The California Public Utilities Commission is the primary adjudicator of both intrastate and interstate slamming complaints in California. A subscriber may request that the FCC rather than the Commission handle an interstate slamming complaint, in which case the FCC would apply its rules, and these rules would govern any related intrastate complaint. Where these rules differ from the FCC's slamming rules, the differences are in recognition of California-specific issues and are consistent with the FCC's mandate to the states.

Compliance with these rules does not relieve carriers of other obligations they may have under their tariffs, other Commission general orders and decisions, FCC orders, and state and federal statutes. Nor do these rules limit any rights a consumer may have.

The Commission intends to continue its policy of cooperating with law enforcement authorities to enforce consumer protection laws that prohibit misleading advertising and other unfair business practices. These rules do not preclude any civil action that may be available by law. The remedies the Commission may impose for violations of these rules are not intended to displace other remedies that may be imposed by the courts for violation of consumer protection laws.

These rules take precedence over any conflicting tariff provisions on file at the Commission. The remedies provided by these rules are in addition to any others available by law. Prosecution, whether civil or criminal, by any local or state law enforcement agency to enforce any consumer protection or privacy law does not interfere with any Commission policy, order or decision, or the performance of any duty of the Commission, related to the enactment or enforcement of these rules.

B. Definitions

Authorized Carrier:

Any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with state and federal law.

Commission:

California Public Utilities Commission, unless otherwise noted.

Consumer Affairs Branch (CAB):

The Commission office where California consumers may complain about a utility service or billing problem they have not been able to resolve with the utility.

Days:

Calendar days, unless otherwise noted.

Executing Carrier:

Any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

FCC:

Federal Communications Commission.

LATA:

Local Access and Transport Area.

Submitting Carrier:

Any telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed and seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

Subscriber:

Any one of the following:

- (1) The party identified in the account records of a carrier as responsible for payment of the telephone bill;
- (2) Any adult person authorized by such party to change telecommunications services or to charge services to the account;
or
- (3) Any person contractually or otherwise lawfully authorized to represent such party.

Unauthorized Carrier:

Any telecommunications carrier that submits a change, on behalf of the subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with state and/or federal law.

Unauthorized Change:

A change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures described in state and/or federal law.

C. Authorization and Verification of Orders for Telecommunications Services

Authorization and verification of orders for telecommunications services shall be done in accordance with applicable state and federal laws.

D. Carrier Liability for Slamming

(a) Carrier Liability for Charges. Any submitting telecommunications carrier that fails to comply with the required procedures for changing carriers or verifying subscriber authorization shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in Part 5.H. The remedies provided in this Part 5 are in addition to any other remedies available by law.

(b) Subscriber Liability for Charges. Any subscriber whose selection of telecommunications services provider is changed without authorization verified in accordance with legally-required procedures is liable for charges as follows:

- (1) If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for

charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of Part 5.G(e).

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in paragraph (a) of this section, the authorized carrier shall refund or credit to the subscriber any amounts determined in accordance with the provisions of Part 5.H(c).

(3) If the subscriber has been absolved of liability as prescribed by this section, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

E. Procedures for Resolution of Unauthorized Changes in Preferred Carrier

(a) Notification of Alleged Unauthorized Carrier Change. Executing carriers who are informed of an unauthorized carrier change by a subscriber must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.

(b) Referral of Complaint. Any carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber to CAB for resolution of the complaint.

(c) Notification of Receipt of Complaint. Upon receipt of an unauthorized carrier change complaint, CAB will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30 days after the slam from the subscriber's bill pending a determination of whether an unauthorized change, as defined by Part 5.B, has occurred, if it has not already done so.

(d) Proof of Verification. Not more than twenty days after notification of the complaint, the alleged unauthorized carrier shall provide to CAB a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid

authorized carrier change, as that term is defined in Parts 4.F through 4.G. CAB will determine whether an unauthorized change, as defined by Part 5.B, has occurred using such proof and any evidence supplied by the subscriber. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

F. Absolution Procedure Where the Subscriber Has Not Paid Charges

(a) This section shall only apply after a subscriber has determined that an unauthorized change, as defined by Part 5.B, has occurred and the subscriber has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred.

(b) An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by Part 5.B, from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred.

(c) An allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by Part 5.B, occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: the complaining subscriber must file a complaint with CAB within 30 days of either: the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section or; the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and a failure to file such a complaint within this 30-day time period will result in the charges removed pursuant to paragraph (b) of this section being reinstated on the subscriber's bill and, consequently, the complaining subscriber will only be entitled to remedies for the alleged unauthorized change other than those provided for in Part 5.E(b)(1). No allegedly unauthorized carrier shall reinstate charges to a subscriber's bill pursuant to the provisions of this paragraph without first providing such subscriber with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph.

(d) If CAB, under Part 5.I. below, determines after reasonable investigation that an unauthorized change, as defined by Part 5.B, has occurred, it shall notify the carriers involved that the subscriber is entitled to absolution from the charges incurred during the first 30 days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the subscriber for those charges.

(e) If the subscriber has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the subscriber for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the subscriber for the same services had an unauthorized change, as described in Part 5.B, not occurred; or

(2) The amount of the charge may be determined using a 50% Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the subscriber for 50% of the rate the unauthorized carrier would have charged the subscriber for the services provided. However, the subscriber shall have the right to reject use of this 50% proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in paragraph (e)(1) of this section.

(f) If the unauthorized carrier received payment from the subscriber for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in Part 5.H shall apply to those payments. If CAB, under Part 5.I. below, determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the subscriber for charges incurred.

G. Reimbursement Procedures Where the Subscriber Has Paid Charges

(a) The procedures in this section shall only apply after a subscriber has determined that an unauthorized change, as defined by Part 5.B, has occurred and the subscriber has paid charges to an allegedly unauthorized carrier.

(b) If CAB, under Part 5.I. below, determines after reasonable investigation that an unauthorized change, as defined by Part 5.B, has occurred, it shall direct the unauthorized carrier to forward to the authorized carrier the following:

(1) An amount equal to 150% of all charges paid by the subscriber to the unauthorized carrier; and

(2) Copies of any telephone bills issued from the unauthorized carrier to the subscriber. This order shall be sent to the subscriber, the unauthorized carrier, and the authorized carrier.

(c) Within ten days of receipt of the amount provided for in paragraph (b)(1) of this section, the authorized carrier shall provide a refund or credit

to the subscriber in the amount of 50% of all charges paid by the subscriber to the unauthorized carrier. The subscriber has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid by the subscriber to the unauthorized carrier. The authorized carrier shall also send notice to CAB that it has given a refund or credit to the subscriber.

(d) If an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(e) If the authorized carrier has not received payment from the unauthorized carrier as required by paragraph (c) of this section, the authorized carrier is not required to provide any refund or credit to the subscriber. The authorized carrier must, within 45 days of receiving CAB's determination as described in paragraph (b) of this section, inform the subscriber and CAB if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(f) Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if the subscriber's participation in that program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

[Comment: Nothing in these Part 5 rules is intended to prohibit a subscriber and an alleged unauthorized carrier from making mutually-agreeable arrangements for compensating the subscriber and restoring the service to the authorized carrier without the subscriber's having to file a complaint with CAB; provided, however, that the alleged unauthorized carrier must first have informed the subscriber of the 30-day absolution period and the subscriber's right to file such a complaint.]

H. Informal Complaints

The following procedures shall apply to informal complaints to the Commission alleging an unauthorized change of a subscriber's preferred carrier, as defined by Public Utilities Code § 2889.5 or the FCC's slamming rules.

(a) *Address:* Complaints shall be mailed to:

Slamming Complaints
Consumer Affairs Branch
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

(b) *Form:* The complaint shall be in writing, and should contain: (1) the complainant's name, address, telephone number, and e-mail address (if the complainant has one); (2) the names of the alleged unauthorized carrier, the authorized carrier, and the executing carrier, if known; (3) the date of the alleged unauthorized change, if known; (4) a complete statement of the facts (including any documentation) showing that the carrier changed the subscriber's preferred carrier without authorization; (5) a copy of the subscriber's bill which contains the unauthorized changes; (6) a statement of whether the complainant has paid any disputed charges to the alleged unauthorized carrier; and (7) a statement of the specific relief sought.

(c) *Procedure:*

(1) The CAB staff will acknowledge receipt of subscriber's complaint and inform the subscriber of the procedures for resolving it.

(2) The CAB will notify the executing carrier, the authorized carrier, and the alleged unauthorized carrier of the alleged unauthorized change.

(3) The CAB staff will require the alleged unauthorized carrier to produce evidence of authorization and verification, and any other information or documentation the CAB staff may need to resolve the subscriber's complaint. The alleged unauthorized carrier shall provide evidence of subscriber authorization and verification within ten business days of CAB's request. If evidence of authorization and verification is not provided within ten business days, a presumption exists that an unauthorized change occurred, and CAB staff will find that an unauthorized change did occur.

(4) Upon request by the CAB staff for information other than the subscriber authorization and verification, the alleged unauthorized carrier shall provide such information within twenty days of CAB's request or provide a written explanation as to why the information cannot be provided within the required twenty days and an estimate of when it will provide the information.

(5) The CAB staff will determine whether an unauthorized change has occurred. CAB's investigation may include review of the alleged subscriber authorization, verification, solicitation methods and materials, and any other information CAB staff determines is relevant to the investigation.

(6) Upon concluding its investigation, the CAB staff will inform the subscriber, the executing carrier, the alleged unauthorized carrier, and the authorized carrier of its decision.

(d) Appeals:

(1) If the subscriber is not satisfied with the CAB staff decision, the subscriber may appeal the decision to a Consumer Affairs Manager. The subscriber shall present new information or explain any factual or legal errors made in the CAB staff decision.

(2) If the subscriber is not satisfied with the resolution of the complaint by the Consumer Affairs Manager, the subscriber may file a formal complaint with the Commission according to the Commission's Rules of Practice and Procedure, Article 3.

(3) If the CAB staff finds that an unauthorized change has occurred but the unauthorized carrier disagrees and pursues billing or collection against the subscriber, CAB staff will forward this information to Commission's enforcement staff and advise the subscriber to file a formal complaint.

I. Reports

Carriers shall provide to the Director of the Commission's Consumer Protection and Safety Division the reports carriers submit to the FCC in compliance with the FCC Slamming Rules. Carriers shall provide these reports to Consumer Protection and Safety Division at the same time the reports are provided to the FCC.

Rule 5: Contract Changes

A carrier shall not modify a subscriber's term contract in a manner that is materially adverse to the subscriber without providing reasonable advance notice of the

proposed modification and allowing the subscriber at least 14 days after receipt of the notice to cancel the contract with no early termination fee.

Rule 6: Service Termination

(a) Providers of basic service shall provide notices in writing to subscribers whose payments are overdue not less than 7 calendar days prior to terminating service for nonpayment. A minimum of one written termination notice shall include:

(1) Information sufficient for the subscriber to identify what service(s) are to be terminated, and the delinquent amount(s). If basic service is to be disconnected, the notice shall state the minimum amount that must be paid to retain basic service.

(2) The date by which payment, or arrangement for payment, must be made to avoid termination.

(3) A toll-free telephone number to reach a carrier service representative who can provide subscriber assistance.

(b) Basic exchange service may not be disconnected on any day carrier service representatives are not available to assist subscribers.

(c) The notice and disconnection requirements of Rules 6 and 8 do not apply where the subscriber's acts or omissions demonstrate an intention to defraud the carrier, or threaten the integrity or security of the carrier's operations or facilities.

(d) Carriers of last resort may not disconnect basic residential or single line business service, either flat rate or measured rate, as defined in D.96-10-066, Appendix B, page 5, for nonpayment of any charge other than non-recurring or recurring charges for that same service, including mandated surcharges and taxes calculated on that service. Mandated surcharges do not include charges that the carrier may elect to recover.

(e) Where a provider of basic service offers and a subscriber agrees to an alternative payment plan, the provider must provide confirmation of the terms in writing, if the subscriber so requests.

(f) Every provider of basic service shall comply with the rules adopted by the Commission in D.91188 regarding service denial or disconnection for use of telecommunications service in violation of the law.

Rule 7: [Reserved]

Rule 8: Billing Disputes

(a) In the case of a billing dispute between a subscriber and a carrier, the carrier shall investigate the charge(s) the subscriber has informed the carrier are in question, and shall communicate with the subscriber within 30 days. From the date the customer notifies the carrier of a billing dispute and during the time the carrier's investigation is pending, no late charges or penalties may be collected, the charge may not be sent to collection, and no adverse credit report may be made based on non-payment of the charge. If the subscriber prevails, then the subscriber shall not be liable for any late charge or penalty on the amount in dispute.

(b) A provider of basic service may not disconnect service to a subscriber by reason of non-payment of the disputed amount before seven calendar days after the date the carrier notifies the subscriber of the results of its investigation. In no event shall the carrier disconnect service prior to the due date shown on the bill, except when the carrier is in possession of substantial, credible evidence of fraudulent use.

(c) A carrier shall not provide, as a term or condition of service, for a choice of law other than that of California, for a forum for the adjudication of disputes located in a county other than the California county in which the subscriber is billed or which is the subscriber's primary place of use of the service, or for any limitation of the right of subscribers to bring complaints to the commission or any other agency. Carriers shall not by contract hold subscribers liable for carrier costs resulting from complaints before the Commission, or another agency.

Rule 9: [Reserved]

Rule 10: Consumer Affairs Branch Requests for Information

(a) Every carrier shall designate one or more representatives to be available during regular business hours (Pacific time) to accept Consumer Affairs Branch inquiries and requests for information regarding informal complaints from subscribers. Every carrier shall provide to the Consumer Affairs Branch and keep current its list of representative names, telephone numbers and business addresses.

(b) To the extent permitted under state or federal law, every carrier shall provide all documents and information Consumer Affairs Branch may request in the performance of its informal complaint and inquiry handling responsibilities, including but not limited to subscriber-carrier service agreements and contracts, copies of bills, carrier solicitations, subscriber authorizations, correspondence between the carrier and subscriber, applicable third party verifications, and any other information or documentation. Carriers shall provide requested documents and information within a reasonable period of time.

(c) Nothing in these rules shall limit or expand the lawful authority of the Commission or any part of its staff to obtain information or records in the possession of carriers when they determine it necessary or convenient in the exercise of their regulatory responsibilities to do so.

Rule 11: Employee Identification

(a) Every carrier shall prepare and issue to every employee who, in the course of his or her employment, has occasion to enter the premises of subscribers of the carrier or applicants for service, an identification card in a distinctive format having a photograph of the employee. The carrier shall require every employee to present the card upon requesting entry into any building or structure on the premises of an applicant or subscriber.

(b) Every carrier shall require its employees to identify themselves at the request of any applicant or subscriber during a telephone or in-person conversation, using a real name or other unique identifier.

(c) No carrier shall misrepresent, or allow its employees to misrepresent, its association or affiliation with a telephone carrier when soliciting, inducing, or otherwise implementing the subscriber's agreement to purchase products or services, and have the charge for the product or service appear on the subscriber's telephone bill.

Rule 12: Emergency 911 Service

All carriers providing end-user access to the public switched telephone network shall, to the extent permitted by existing technology or facilities and in accordance with all applicable Federal Communications Commission orders, provide every residential telephone connection, and every wireless device technologically compatible with its system, with access to 911 emergency service regardless of whether an account has been established. No carrier shall terminate such access to 911 emergency service for non-payment of any delinquent account or indebtedness owed to the carrier.

Rule 13: Sunset

These rules and any amendments to these rules shall expire and be of no further force and effect upon the expiration of 36 months from their adoption by the Commission, unless further extended by the Commission prior to their expiration.